Ellsberg Assails Court on Juror Questioning

By Sanford J. Ungar
Washington Post Staff Writer

LOS ANGELES, July 12—The defense in the Pentagon Papers case charged today that the court was using a double standard in questioning prospective jurors, taking a tougher line with those thought to favor the defendants.

The charge was made after a prospective juror in the trial of Daniel Ellsberg and Anthony Russo declared that he had reached the advance "conclusion" that the defendants are guilty of conspiracy, theft of government property and espionage.

John I. Hietala, who retired in May after working for 34 years in the California oil industry, said at one point during questioning by U.S. District Court Judge W. Matt Byrne Jr. that "I don't think I could" disregard that conclusion in weighing the merits of the case.

Nonetheless, Hietala, who lives in a working-class neighborhood of Los Angeles, was permitted to remain on the tentative jury panel after changing his mind to say that "I'm sure I could" disregard his opinions.

Explosive Protest

The questioning of Hietala, one of the first 18 potential jurors seated in the jury box in federal court here, led to an explosive courtroom protest by defense lawyers that Byrne was seeking to "rehabilitate" persons when they indicate views that might disqualify them from serving in the case.

Leonard I. Weinglass, chief counsel for Russo, complained that "we're getting nowhere" in the examination of the jury panel.

He insisted, for example, that the judge should have demanded to know whether Hietala could accord the defendants the "presumption of innocence" built into the American judicial system despite his advance opinions.

The defense contended that Byrne was employing a double standard by questioning more extensively those prospective jurors who seemed to be leaning toward Ellsberg and Russo and said they had strong views against the war in Vietnam.

The attorneys were specially concerned about the new interrogation today of Marie Goldstein, who said she felt "definite sympathy" for Ellsberg but added that "right now I don't feel that it would get in the way" of her objectivity.

Mrs. Goldstein, who worked on the Manhattan Project that developed the atomic bomb during World War II and whose daughter demonstrated at the 1968 Democratic National Convention in Chicago, is one of the people the defense seems prepared to fight to keep on the panel.

She indicated in court today that she had done some soul-searching overnight about whether she could serve properly.

Views on McGovern

As an example of her capacity to be objective, Mrs. Goldstein said she thought it was relevant that while she supported Sen. George McGovern for President, she also agreed with the original decision of the Credentials Committee of the Democratic National Convention to strip away part of the California delegation that supported him.

But in response to a question by the judge, Mrs. Goldstein acknowledged that if she were one of the prosecution lawyers in the case, she would not want to see a jury made up entirely of people who share her opinions on the war and Ellsberg.

In that event, she observed, "I think it would be too overwhelming against the government."

As jury selection continued for the third day today, it became apparent that the Ellsberg-Russo case poses special problems because of the controversial issues involved.

Under pressure from the defense, Byrne began asking prospective jurors whether they felt capable of reading extensive sections of the Pentagon Papers, which Ellsberg and Russo are charged with disclosing illegally.

Chief prosecutor David R. Nissen said he was opposed to that line of questioning, because it would be "foolish" to plant any suggestions of how the jurors should handle the evidence in the case.

The defense insisted, however, that it is relevant to probe the potential jurors' education background in detail in order to determine whether they could capably handle the extensive documentary evidence.

Leonard B. Boudin, representing Ellsberg, expressed particular concern about one member of the panel, Louis J. Asta, who said he had only a grammar school education in Italy.

Asked today whether he felt up to the task of reading the papers, Asta replied, "I do my best . . . I try my best."